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NO_____

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988,

LAWRENCE AND EDITH TRESIZE,

PETITIONERS,

VS.

UNITED STATES OF AMERICA,

RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

LAWRENCE TRESIZE AND EDITH TRESIZE,
2700 N.E.135 STREET, MIAMI, FLORIDA 33181
305-947-1972.

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305-947-1972.

QUESTIONS PRESENTED FOR REVIEW

1) WHETHER 82 YEAR OLD EDITH TRESIZE DESCENDANT OF 3 GENERATIONS OF LAWYERS, WHOSE ANCESTORS ON BOTH SIDES FOUGHT IN THE AMERICAN REVOLUTION, AND WHO IS A DAME OF THE AMERICAN REVOLUTION, WHO TAUGHT HIGH SCHOOL FOR 42 YEARS, RETIRING WITH A GRADE OF SUPERIOR, IS A CRIMINAL AS DESIGNATED BY JUDGE C.C.ATKINS.

2) WHETHER THE TRIAL COURT AND COURT OF APPEALS ERRED IN THE DISMISSAL OF PERITIONERS' PLEADING WITHOUT CONSIDERATION OF TITLE 28, SECTION 1331. (VIOLATION OF PETITIONERS' SEVENTH AMENDMENT RIGHTS TO A JURY TRIAL AND FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS.

3) WHETHER THE TRIAL COURT AND COURT OF APPEALS ERRED IN SANCTING A CRIMINAL, SUSPENDED FROM PRACTING LAW, TO PRACTICE LAW IN THE TRIAL COURT IN PETITIONERS' CASE BEFORE JUDGE C.C. ATKINS, 87-0403.

4) WHETHER THE TRIAL COURT AND COURT OF APPEALS ERRED IN EXERCISE OF JURISDICTION

BY ORDERING PETITIONERS TO PAY TWICE THE AMOUNT OF MONEY IN LEGAL FEES DEMANDED BY THE DE FACTO LAW PARTNER OF CRIMINAL SUSPENDED LAWYER.

5. WHETHER THE TRIAL COURT AND COURT OF APPEALS ERRED IN THE ARBITRARILY LABELING OF THE CHARGE CRIMINAL CONTEMPT RATHER THAN CIVIL CONTEMPT.

6. WHETHER THE TRIAL COURT AND THE APPEALS COURT ERRED IN FINDING PETITIONERS GUILTY OF VIOLATING RULE 11 AND OF CRIMINAL CONTEMPT OF COURTAFTER THE CASE WAS DISMISSED WITH PREJUDICE.

7. WHETHER RULE 11 OF THE FED.R.CIV.P. AND RULES IS CONSTITUTIONAL,SINCE THE THREAT OF HEAVY SANCTIONS INTIMIDATES LITIGANTS, THEREBY DENYING THEM ACCESS TO THE COURTS IN VIOLATION OF THEIR FIRST AMENDMENT RIGHTS UNDER THE CONSTITUTION, AS WELL AS ARTICLE 1,SECTION 21 OF THE FLORIDA CONSTITUTION TITLED "ACCESS TO THE COURTS."

8) WHETHER A.J.GOSHGARIAN, N.F.SOLOMON, N.K.RUTKIN AND C.C.ATKINS VIOLATED USCC 18, SEC.241, BY CONSPIRING TO DEPRIVE PETITIONERS OF THEIR CONSTITUTIONAL RIGHTS UNDER THE NINTH AND FOURTEENTH AMENDMENTS.

9) WHETHER ANY PERSON, INCLUDING THE PRESIDENT OF THE UNITED STATES IS ABOVE THE LAW.

10) WHETHER JUDGE C.C.ATKINS, BORN IN 1914, VIOLATOR OF THE U.S.CONSTITUTION AND FED.R. CIV.P., EXHIBITING FLAGRANT SYMPTOMS OF SENILITY IN HIS COURT ROOM IS MENTALLY FIT TO SIT IN JUDGEMENT ON HIS FELLOW MEN.

11) WHETHER THE 6 MONTHS RULE WHICH DENIES THE RIGHT TO TRIAL BY JURY FOR PETTY CRIMES SHOULD BE REVIEWED BY THE U.S.SUPREME COURT AS BEING UNCONSTITIONAL.

12) WHETHER 28, F.R.C.P., RULE 11 SHOULD BE REVIEWED BY THE U.S.SUPREME COURT BECAUSE OF ITS UNCONSTITUTIONAL MENACE TO "WE THE PEOPLE!

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Opinions and Judgement Below

The District Court illegally found the Petitioners guilty of criminal contempt of court. Petitioners filed their Notice of Appeal on November 9,1987(A 1). On July 25,1988 the criminal conviction was affirmed (A 2). On September 11,1988 a motion for rehearing was filed (A 3). Rehearing was denied on September 28,1988. (A 4). On October 14,1988 the judgements and conviction of the district court were Affirmed by Judgement (A 5).

JURISDICTION

THE JURISDICTION OF THE UNITED STATES SUPREME COURT IS INVOKED IN THIS CASE PURSUANT TO 28,FED.R.CIV.P.1254(1). THE ORIGINAL CASE WAS FILED IN COMMON LAW AT LAW IN THE U.S.D.C.OF FLORIDA,SOUTHERN DISTRICT,MARCH 3,1987.(OFF.TR.JULY 29,1987 P.12,L,25,P.13,L,1,P.14,LL,7-9).JURISDICTIONWAS CLAIMED PURSUANT TO 28, FED.R.CIV. P.1331,WHICH PROVIDES "THE DISTRICT COURT SHALL HAVE ORIGINAL JURISDICTION OF ALL CIVIL ACTIONS ARISING UNDER THE CONSTITUTION". THE COMPLAINT CLAIMED REDRESS OF GRIEVANCES,DENIAL OF DUE PROCESS AND PROTECTION OF THE LAW,AND VARIOUS VIOLATIONS OF THE U.S.CONSTITUTION AND CONSTITUTION OF THE STATE OF FLORIDA (OFF.TR.SEPT.8,1987 P.25,LL,9-17.) ON JUNE 12,1987,JUDGE C.C. ATKINS DISMISSED THE CASE WITH PREJUDICE FOR LACK OF JURISDICTION ON THE BASIS THAT THE PLAINTIFFS DID NOT ALLEGE DIVERSITY OF

CITIZENSHIP (OFF.TR.JULY 29,1987,P.4,LL 8-9,P.5,LL7-21,P.9,LL,17-18,P.11,L,13.), WHICH THE JUDGE ERRONEOUSLY CLAIMED WAS THE ONLY BASIS FOR FEDERAL JURISDICTION.

THE DISTRICT COURT JUDGE THEREAFTER RELITIGATED THE DISMISSED CASE HIMSELF, HOLDING COURT HEARINGS IN JULY AND SEPTEMBER,1987. AT THESE HEARINGS, HE CONVICTED THE TRESIZES OF HAVING VIOLATED RULE 11 OF THE FED.R.CIV.P. BECAUSE THEY HAD FILED DEFAULT JUDGEMENTS AND LIENS ON PROPERTIES OF THE DEFENDANTS, AND, AFTER THE DISMISSAL OF THE CASE JUNE 12,1987, THEY HAD FILED LIS PENDENS ON THESE PROPERTIES. THE JUDGE ERRONEOUSLY ACCEPTED THE OPPOSITION ARGUMENT THAT THESE PLEADINGS WERE FOR THE PURPOSE OF HARASSMENT. HE ALSO CONVICTED THE TRESIZES OF CRIMINAL CONTEMPT OF COURT FOR THE ABOVE REASONS PLUS THE FACT THAT THEY HAD FAILED TO APPEAR BEFORE HIM IN ANSWER TO AN ORDER. THEY HAD, HOWEVER, SENT A JUDICIAL NOTICE EXPLAINING

THEIR NON-APPEARANCE, AND THEY HAD FILED THEIR PLEADINGS ON THE PROPERTIES IN ACCORDANCE WITH OLD ESTABLISHED COMMON LAW. (KOFFLER AND REPPY, COMMON LAW PLEADINGS, PAGE 584.) FURTHER SUPPORT OF THE SUBSTANTIVE RIGHTS UNDER THE COMMON LAW IS PROVIDED IN 28.FED.R.CIV.P.SEC. 2072. CASE LAW ESTABLISHES THE FACT THAT COMMON LAW LIENS SUPERCEDE MORTGAGES AND EQUITY LIENS: DRUMMOND CARRIAGE CO.V.MILLS, (1898)74 N.W.966; HEWITT V.WILLIAMS 47 LA.ANN.742, 17So.269; CARR V.DAIL, 19 S.E.235; AND MCMAHON V.LUDIN, 58 N.W.827. NEVERTHELESS, JUDGE C.C.ATKINS DID IN FACT EXPUNGE PETITIONERS' COMMON LAW LIENS FROM THE PUBLIC RECORDS. THE RULING OF THE UNITED STATES SUPREME COURT IN THE CASE OF RICH V. BRAXTON, 158 U.S.375, SPECIFICALLY FORBIDS JUDGES FROM INVOKING EQUITY JURISDICTION TO REMOVE COMMON LAW LIENS: "ANY OFFICIAL WHO ATTEMPTS TO MODIFY OR REMOVE THIS COMMON LAW LIEN IS IMMEDIATELY FULLY LIABLE TO DEMANDANTS FOR A SUM CERTAIN EQUAL TO ALL DAMAGES REQUESTED HEREIN;" AS STATED BY THE UNITED STATES SUPREME COURT IN BUTZ V. ECONOMOU, 98 SUP.CT.

2894,438 U.S.57 L Ed 2d 895;Bell v.Wood 327 U.S.678;United States v.Lee,U.S.196. Further,it is stated that "the party who brings a suit is master to decide what law he will rely upon and. . .does determine whether he will bring a suit arising under the . . .(Constitution or laws) of the United States by his declaration or bill." The Fair v.Kohler Die Co.,228 U.S.22,25.

In the November 3,1987 hearing,the original number of the case was changed to 87-519 Cr. as judge C.C.Atkins had changed the original simple Civil case to a Criminal case,charging violationof Rule 42b of the Fed. R.C.C. At this November hearing,the judge imposed sentencing on the Tresizes,namely six months jail (suspended),three years probation, and EACH Tresize was sentenced to pay the total amount of the attorneys' fees,thereby doubling the amount demanded by the conspirator attorneys (off.Tr.Nov. 3,1987,P. 31,ll,3-25,P.32,ll,1-2.)

A TIMELY APPEAL PURSUANT TO 28 USC,1291 WAS MADE TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT,WHICH ON JULY 25, 1988 AFFIRMED THE DECISION TO UPHOLD THE JUDGEMENT OF THE DISTRICT COURT.(APPENDIX A-PAGE-2).

PURSUANT TO FRAP 35,A MOTION FOR GRANTING SUGGESTION OF REHEARING EN BANC WAS SUBMITTED TO THE COURT OF APPEALS ON AUGUST 3, 1988.THE JUDGEMENT DENYING THE REHEARING EN BANC AND AFFIRMING THE PREVIOUS DECISION WAS ISSUED AS A JUDGEMENT ON OCTOBER 14,1988, (APPENDIX A, A-5).

CONSTITUTIONAL PROVISIONS,FEDERAL AND STATE STATUTES.

FOR ABOVE SEE PP. ix and x.

STATEMENT OF THE CASE

PETITIONERS, INVOKING THE PROTECTION OF HAINES v. KERNER 404 US 519 (1972), FILED THEIR CIVIL CASE IN COMMON LAW AT LAW, IN THE U.S. DISTRICT COURT 11TH. CIR. SO. FLA., MARCH 12, 1987. THIS CASE STEMMED FROM THE DISMISSAL WITH PREJUDICE OF AN EARLIER SUIT FILED IN THE CIRCUIT COURT OF DADE COUNTY, WHICH HAD CLAIMED VIOLATIONS OF THE STATUTES 719, 607, AND 617 OF THE STATE OF FLORIDA AND VIOLATIONS OF THE DOCUMENTS OF FAIRMONT HOUSE, INC., A COOPERATIVE COMPLEX IN WHICH THESE PETITIONERS ARE CO-OWNERS. AS A RESULT OF THESE VIOLATIONS, THE MONIES OF THE CO-OWNERS WERE BEING RECKLESSLY DISSIPATED BY THE BOARD OF GOVERNORS. THE DISMISSAL OF THIS CASE BY THE CIRCUIT JUDGE, AUGUST 19, 1986 ENCOURAGED FURTHER VIOLATIONS BY THE BOARD OF GOVERNORS, WHICH ARE CONTINUING. THE CASE IN THE CIRCUIT COURT HAD BEEN MARKED BY LACK OF DUE PROCESS AND VARIOUS OTHER U.S. CONSTITUTIONAL VIOLATIONS AS WELL AS VIOLATIONS OF THE STATE OF FLORIDA. ALL OF ABOVE

PLUS SOME NEW MATERIAL WAS THE BASIS FOR THE CASE FILED IN THE U.S.DIST.CT.AND DOCKETED AS CASE No.87-0403 CIV.,ASSIGNED TO JUDGE C.C.ATKINS. PETITIONERS CLAIMED JURISDICTION UNDER 28,USC 1331,DEMANDING REDRESS OF GRIEVANCES AND PROTECTION OF THE LAW PURSUANT TO THE U.S.CONSTITION. FURTHER AUTHORITY FOR JURISDICTION WAS PROVIDED BY 18,USCC, 241 AND BY 28,USC RULE 38. JUDGE C.C.ATKINS DISMISSED ABOVE CASE WITH PREJUDICE JUNE 12,1987, STATING THE FEDERAL COURT HAD NO JURISDICYION BECAUSE THE PETITIONERS HAD NOT ALLEGED DIVERSITY OF CITIZENSHIP, USC,1332. THE NEXT MONTH,HOWEVER, C.C. ATKINS BEGAN RELITIGATING THE DISMISSED CASE HIMSELF, BY SENDING AN ORDER TO THESE PETITIONERS TO APPEAR BEFORE HIM. PETITIONERS, ACCORDING TO COMMON LAW TRADITION,ANSWERED THIS SUMMONS BY SENDING A JUDICIAL NOTICE, EXPLAINING THAT SINCE THE JUDGE HAD REPEATEDLY ANNOUNCED THAT HE HAD NO JURISDICTION IN THIS CASE, HE HAD NO LEGAL AUTHORITY TO ORDER THEM TO APPEAR. THE JUDGE RESPONDED

BY SENDING ARMED MARSHALS, UNABLE TO PRO DUCE A WARRANT WHEN SO DEMANDED, TO ARR- EST 82 YEAR OLD MRS. TRESIZE AND MR. TRE- SIZE AND BRING THEM TO COURT.

THIS HEARING, JULY 29, 1987, AS WELL AS THE NEXT HEARING, SEPT. 8, 1987, WAS DOCKETED AS CASE No. 87-0403, THE NUMBER OF THE CASE DISMISSED JUNE 12, 1987. AT THE HEARING, JUDGE C.C. ATKINS ANNOUNCED THAT HE WAS CHAR- GING THE PETITIONERS WITH VIOLATION OF RULE 11, 28, USC, CLAIMING THAT THE COMMON LAW DEFAULT JUDGEMENTS, LIENS, AND LIS PENDENS WHICH THE PETITIONERS HAD FILED ON THE PRO- PERTIES OF THE MEMBERS OF THE BOARDS OF GOV ERNORS OF FAIRMONT HOUSE, INC. THE LIS PENDENS LIENS HAVING BEEN FILED AFTER THE JUNE 12, 1987 DISMISSAL OF CASE 87-0403, WERE ILLEGAL AND FOR THE PURPOSE OF HARASSMENT. HE REJECTED THE PETITIONERS' STATEMENT THAT THE RECORD SHOWS THE MOTIVATION OF THE PETITIONERS THRO- UGHOUT THE ENTIRE LITIGATION HAD BEEN TO FORCE COMPLIANCE WITH THE LAW AND TO SAVE MONEY AND TO IMPROVE CONDITIONS FOR THE CO-OWNERS OF

FAIRMONT HOUSE, INC. THE DEFAULT JUDGEMENTS THE LIENS, AND LIS PENDENS, ALL FILED ACCORDING TO HISTORICALLY ESTABLISHED COMMON LAW, HAD BEEN SIMPLY TO ALERT THE BOARD OF GOVERNORS OF FAIRMONT HOUSE, INC. TO ACTION IN NEGOTIATING A SETTLEMENT OF THE CONTROVERSY, AS SEVEN SEPARATE STIPULATIONS FOR SETTLEMENT, REQUESTED BY THE CO-OWNERS (ONE ONLY STIPULATING COMPLIANCE WITH THE LAW), HAD ALREADY BEEN REJECTED.

AT THE SEPT. 8, 1987 HEARING THE PETITIONERS WERE CONVICTED OF VIOLATING RULE 11 AND ALSO OF VIOLATING RULE 42B, 28, USC, AS IN ADDITION TO FILING THE COMMON LAW PLEADINGS (LIS PENDENS AFTER DISMISSAL OF THE CASE), THEY HAD FAILED TO APPEAR IN COURT WHEN SO ORDERED BY THE JUDGE.

AT THE NOV. 3. 1987, HEARING, THE JUDGE IMPOSED SENTENCING (OFF. TR. NOV. 3, 1987, P. 31, LL. 1-25, P. 32, LL. 1-2.).

A TIMELY APPEAL OF THIS DECISION BY THE DIS. CT. WAS ACCEPTED BY THE COURT OF APPEALS IN ATLANTA GEORGIA, AND A THREE PANEL JUDGE

AFFIRMED THE DECISION OF THE DIST.CT.JULY 25,1988,(APPENDIX A, A-2).PETITIONERS HAD CLAIMED VIOLATION OF THEIR U.S.CONSTITUTIONAL RIGHTS, UNDUE SEVERITY IN AN ILLEGAL SENTENCING (LACK OF RECOGNITION OF SUBSTANTIVE RIGHTS UNDER COMMON LAW;USING THE TERM "CRIMINAL RATHER THAN "CIVIL " CONTEMPT OF COURT; CONVICTION OF VIOLATION OF RULE 11;AND DOUBLING THE PAYMENT OF ATTORNEYS'FEES BY IMPOSING THE TOTAL AMOUNT OF ATTORNEYS FEES ON EACH PETITIONER IN A JOINT ACTION SUIT). ALSO, STRONG EVIDENCE WAS ALLEGED RE CONSPIRACY AMONG ATTORNEYS A.J.GOSHGARIAN,HIS DE FACTO LAW PARTNER (SUSPENDED LAWYER N.F.SOLOMON) AND U,S,DIST.JUDGE C.C.ATKINS. THIS APPEAL LIKEWISE RAISED THE QUESTION OF THE MENTAL AND PHYSICAL FITNESS OF JUDGE C.C.ATKINS, BORN IN 1914.

A CONSIDERATION OF SUGGESTION FOR REHEARING EN BANC WAS DENIED BY THE ATLANTA COURT OF APPEALS, SEPT.28,1988;(APP.A-P.A-4).

THE NEXT STEP WAS THE PETITION FOR WRIT OF CERTIORI TO THE U.S.SUPREME COURT,PRESENTED HEREWITH.

REASONS FOR GRANTING CERTIORRI

THE JUDGEMENT OF THE COURT OF APPEALS FAILED TO ADDRESS SPECIFICIALLY ANY OF THE ISSUES PRESENTED BY THE PETITIONERS EXCEPT THE LEGALITY OF DENIAL OF THE RIGHT OF TRIAL BY JURY WHEN THE SENTENCE OF INCARCERATION DID NOT EXCEED SIX MONTHS. EVEN THIS RULING IS CONTROVERSIAL.

THE OFFICE OF THE U.S.ATTORNEY HAD CITED, AS SUPPORT FOR THE ABOVE RULING, THE CASE OF FRANK v. UNITED STATES 395 US 147, 148-50(1969), AND THE COURT OF APPEALS GAVE OTHER SUPPORTIVE CASE REFERENCES. HOWEVER, RESEARCH OF THE FRANK CASE DISCLOSES THAT IN A SPLIT DECISION TWO OF THE NINE JUDGES OF THE SUPREME COURT HALF-HEARTEDLY AFFIRMED IT, AND TWO OF THE JUDGES WERE STRONGLY OPPOSED, WITH VERY ARTICULATE ARGUMENTS. THE RULE OBVIOUSLY VIOLATES MANY PROVISIONS OF THE U.S.CONSTITION, NAMELY, ARTICLE III, AMENDMENT VII, AND AMENDMENTS VI. THE DUE PROCESS CLAUSE IN THE FIFTH AMENDMENT AND IN THE FOURTEENTH AMENDMENT AFFORDS FURTHER PROTECTION OF THE RIGHT OF TRIAL BY JURY. (APPENDIX A-P.A-6).

THE PRESERVATION OF THE RIGHT OF TRIAL BY JURY WAS LIKEWISE SPECIFICALLY STIPULATED IN THE CONGRESSIONAL ACT OF 1934 (APPENDIX A-P.A-7). RIGHT OF TRIAL BY JURY IS INCLUDED IN THE 1950 REVISION OF THE COMMON LAW. THE FINAL CONSOLIDATION OF COMMON LAW AND EQUITY PROCEDURE OCCURRED IN 1967.(APPENDIX A-IBID), AND BOTH THE RULES FOR CIVIL PROCEDURE AND THE CRIMINAL RULES CONTAIN MANY PROVISIONS RE TRIAL BY JURY. HOWEVER, WHEN IN 1966 THESE AMENDMENTS WERE SUBMITTED BY ADVISORY COMMITTEES OF THE JUDICIAL CONFERENCE TO THE U.S.SUPREME COURT FOR APPROVAL AND THEN SENT TO CONGRESS TO BE ADDED TO THE FEDERAL RULES OF PROCEDURE, TWO OF THE SUPREME COURT JUSTICES, JUSTICE BLACK AND JUSTICE DOUGLAS DISSENTED, WITH OPINIONS RELATED TO TRIAL BY JURY.(APPENDIX A-P.A-8)

THERE ARE WARNINGS AGAINST VIOLATION OF CONSTITUTIONALLY PROTECTED CIVIL RIGHTS FROM MANY SOURCES. THE RULING IN Boyd v. U.S.116 US 616 (1886) WARNS," IT IS THE DUTY OF COURTS TO BE WATCHFUL FOR THE CONSTITUTIONAL RIGHTS

OF THE CITIZENS AND AGAINST ANY STEALTH-
FUL ENCROACHMENT THEREON". FURTHEREMORE
USC SEC.2072 STATES THAT RULES SHALL NOT
ABRIDGE,ENLARGE,OR MODIFY SUBSTANTIVE
RIGHTS AND SHALL PRESERVE THE RIGHT OF
TRIAL BY JURY AS AT COMMON LAW AND AS
DECLARED BY THE SEVENTH AMENDMENT TO THE
CONSTITUTION.

JUDGE C.C.ATKINS, IN DENYING THE TRESIZES
A TRIAL BY JURY, BREACHED HIS JUDICIAL OATH
TO UPHOLD,SUPPORT AND DEFEND THE CONSTITUT-
ION. (U.S.CONSTITUTION ARTICLE VI).LACK OF
JURISDICTION OR THE ESTABLISHED UNCONSTIT-
IONALITY OF A LAW OR RULING UNDER WHICH DEFEN-
DANTS ARE CHARGED OR CONVICTED HAS BEEN
HELD AS GROUNDS FOR VACATING THE SENTENCE
OF CONVICTION. (APPENDIX A- .P.A-9
FOR SPECIFIC CASES.)

ALTHOUGH,AMERICAN JURISPRUDENCE 2D
CHARACTERIZES THE DIFFERENTIATION BETWEEN
"CIVIL CONTEMPT" AND "CRIMINAL CONTEMPT"
OF COURT AS "HAZY," JUDGE C.C.ATKINS ERRED
IN NOT FOLLOWING THE GENERAL GUIDE LINES

AND IN CONVICTING THE TRESIZES OF "CRIMINAL" CONTEMPT RATHER THAN THE MORE LOGICAL "CIVIL CONTEMPT."(NEITHER STIGMATIZATION WAS DESERVED BY EITHER PETITIONER AS THEY DID NOT COMMIT ANY CRIME)

BLACK'S LAW DICTIONARY,FIFTH EDITION STATES THAT CRIMINAL CONTEMPT GENERALLY RESULTS FROM AN ACT DONE IN THE PRESENCE OF THE COURT;E.G. CONTUMELIOUS CONDUCT DIRECTED TO THE JUDGE AS A REFUSAL TO ANSWER QUESTIONS AFTER IMMUNITY HAS BEEN GRANTED. THE TRESIZE CASE,AS THE TRANSCRIPTS SHOW,USED NO INSULTING WORDS OR DISPLAYED ANY INSULTING BEHAVIOR IN THE PRESENCE OF THE COURT,NOR DID THEY REFUSE TO ANSWER QUESTIONS. ON THE CONTRARY,MR. TRESIZE EXPRESSED HIS RESPECT TO THE JUDGE IN OPEN COURT.(TR.JULY 29,1987,P.18,LL.17-18).

THE TRESIZES DID FAIL TO APPEAR IN COURT WHEN ORDERED BY THE JUDGE.HOWEVER,THEY SENT A TIMELY JUDICIAL NOTICE TO THE JUDGE EXPLAINING THAT THE JUDGE HAD REPEATEDLY ANNOUNCED THAT HE HAD NO JURISDICTION;CONSEQUENTLY THEY WERE NOT LOGICALLY OR LEGALLY REQUIRED TO COMPLY WITH AN ORDER ISSUED UNDER THE NUMBER

OF THE CASE WHICH PREVIOUSLY HAD BEEN DISMISSED WITH PREJUDICE. OF THE TWO CONTEMPT CHARGES SET FORTH BY BLACK'S GUIDLINES THE CHARGE OF "CIVIL CONTEMP" FITS THE TRESIZE CASE FAR MORE LOGICALLY THAN THE CHARGE OF "CRIMINAL CONTEMPT" EXCEPT THAT BY HIS OWN STATEMENT, THE JUDGE LACKED JURISDICTION. BLACK'S LAW DICTIONARY DEFINES 'CIVIL CONTEMPT' AS " THOSE QUASI CONTEMPTS WHICH CONSIST IN THE FAILURE TO DO SOMETHING WHICH THE PARTY IS ORDERED BY THE COURT TO DO FOR THE BENEFIT OR ADVANTAGE OF ANOTHER PARTY IN THE PROCEEDING BEFORE THE COURT." BLACK FURTHER SAYS THAT <u>CRIMINAL</u> CONTEMPTS ARE 'OFFENSES OR INJURIES OFFERED TO THE COURT AND A FINE OR IMPRISONMENT IS IMPOSED FOR THE PURPOSE OF PUNISHMENT". AT THE SENTENCING, A FINE WAS IMPOSED BY JUDGE C.C.ATKINS WHICH WAS LATER DELETED, AND THE SENTENCE OF IMPRISONMENT WAS SUSPENDED. THE FINANCIAL PROVISION OF THE SENTENCING WAS FOR THE ADVANTAGE OF THE OTHER PARTIES TO THE PROCEEDINGS, BUT WERE TO COMPEL PAYMENTS OF JUDGEMENTS PREVIOUSLY ISSUED, HENCE WERE NOT PUNITIVE. <u>THE CASE OF STATE EX. REL.</u>

BLISS V. GREENWOOD,63 NM 156,315,P 2D.223, IS CITED IN AM.JUR.2ND SECT.4 TO ILLUSTRATE A CIVIL CONTEMPT CASE IN WHICH THE PRIMARY PURPOSE IS TO PROVIDE A REMEDY FOR AN INJURED SUITOR AND TO COERCE AUTHORITY WITH A COURT ORDER. THOSE WERE EXACTLY IDENTICAL TO THE ELEMENTS IN THE TRESIZE CASE.WITH THE EXCEPTION THAT THE JUDGE STATED THAT HE LACKED JURISDICTION IN THE CASE .

IN A CASE FILED APRIL 11,1988 IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT,OREGON,DOCKETED AS CASE NUMBER 87-3161,THE PLEA OF THE DEFENDANT APPELLANT WAS TO VACATE THE STIGMA OF "CRIMINAL" FROM THE CONTEMPT CHARGE OF WHICH SHE HAD BEEN CONVICTED. THE COURT OF APPEALS GRANTED HER PLEA, WHICH INCLUDED THE FOLLOWING ARGUMENTS: THAT THE PURPOSE OF THE CONTEMPT CHARGE WAS COERCIVE AND COMPENSATORY (AS WAS THE PURPOSE IN THE TRESIZE CASE); THE ARGUMENT THAT THE DISTRICT COURT JUDGE HAD PERMITTED THE ACCUSED TO "PURGE" HERSELF BY AGREEING TO FOLLOW ALL FUTURE ORDERS OF THE JUDGE,(THE TRESIZES WERE NOT GIVEN THE OPPORTUNITY OF SO PURGING THEM-

SELVES);BY THE ARGUMENT THAT THE COURT'S EXERCISE OF CRIMINAL SANCTIONS IS RESTRAINED BY THE PRINCIPLE THAT ONLY THE LEAST POSSIBLE POWER ADEQUATE TO THE END PROPOSED SHOULD BE USED IN CONTEMPT CASES (YOUNG V. UNITED STATES EX REL.VEUTTON ET FILS- U.S.-107 S.CT.2124,2135,95 L.ED.740,754 (1987); THE DISTRICT COURT MAY BE REQUIRED TO CONSIDER THE APPROPRIATENESS OF CIVIL REMEDIES BEFORE RESORTING TO CRIMINAL SANCTIONS, SHILLITANI V. UNITED STATES,384 U.S.364, 371,N.9 (1966).FURTHERMORE,THE SUPREME COURT RECENTLY HELD THAT THE PROSECUTION OF A CRIMINAL CONTEMPT BY AN INTERESTED PARTY VIOLATES DUE PROCESS (YOUNG V. EX REL.-U.S.-107S.CT. 2124,95 L.ED.2D 740 (1987).

IN THE TRESIZE CASE.A.J.GOSHGARIAN AND N.F.SOLOMON WERE THE INTERESTED PARTIES.

A FINAL PRINCIPLE OF DIFFERENTIATION BETWEEN CRIMINAL AND CIVIL CONTEMPT MENTIONED IN AMERICAN JURISDICTION 2ND IS THE CONCEPT THAT CRIMINAL CONTEMPTS HAVE BEEN DESCRIBED AS BASICALLY OFFENSES AGAINST SOCIETY.

CERTAINLY THIS CRITERION WOULD ABSOLVE THE TRESIZE POSITION FROM CRIMINALITY. ACCORDING TO AMERICAN JURISPRUDENCE 2ND, THE MERE PRESENCE OF THE UNITED STATES AS A PARTY DOES NOT IMPRESS ON THE CONTROVERSY THE EMINENCE OF A CRIMINAL PROCEEDING. (McCRONE v U.S. 307 U.S. 61, 83 LED. 1108, 59 S CT. 685.)

THE TRIAL COURT CONVICTED THE TRESIZES OF VIOLATING RULE 11, USC 28, THE JUDGE ACCEPTING THE OPPOSITION'S CHARGE THAT THE TRESIZE PLEADINGS WERE FILED FOR AN IMPROPER PURPOSE, NAMELY, TO HARASS THE CO-OWNERS OF FAIRMONT HOUSE, INC. THESE PETITIONERS DENIED THE CHARGE, STATING THAT THE RECORD CONSISTENTLY SHOWS THAT THE ENTIRE MOTIVATION THROUGHOUT THE CASE HAD BEEN TO IMPROVE CONDITIONS AND SAVE MONEY FOR ALL THE CO-OWNERS OF FAIRMONT HOUSE INC. BY TRYING TO FORCE COMPLIANCE BY THE BOARDS OF GOVERNORS AT FAIRMONT HOUSE, INC. WITH THE STATUTES OF FLORIDA AND THE DOCUMENTS OF THE ASSOCIATION. THE PROPERTY FILINGS WERE RECORDED ONLY AFTER SEVEN STIPULATIONS FOR SETTLEMENT OF THE TRESIZE CASE HAD BEEN REJECTED BY CERTAIN CO-OWNERS, AND ONE SUCH

OFFER STIPULATING ONLY STATUTORY AND DOCUMENTARY COMPLIANCE BY THE GOVERNORS,WITH NO DEMAND BY THE TRESIZES FOR EXPENSES.

THE COMPLETELY APATHETIC ATTITUDE OF THE CO-OWNERS SPURRED THE TRESIZES TO FILE FINAL JUDGEMENTS.LIENS,AND THEN LIS PENDENS ON THE PROPERTIES OF THE BOARDS OF GOVERNORS. ALL OF THE TRESIZES FILINGS WERE DONE ACCORDING TO THE ESTABLISHED TRADITIONS OF THE OLD ENGLISH COMMON LAW.(FOR FINAL JUDGEMENT,SEE KOFFLER AND REPPY,COMMON LAW PLEADING,P.584) (APPENDIX A-P.A-11).

AS INDICATED,THE PURPOSE OF FILING THE COMMON LAW PLEADINGS WAS ENTIRELY PROPER,I.E. TO FOCUS THE ATTENTION OF THE APATHETIC CO-OWNERS ON THE NEED TO SETTLE THE CONTROVERSY BETWEEN THEM AND THE TRESIZES. THE SIZE OF THE LIENS PRECLUDED ANY REALISTIC EXPECTATION OF PAYMENT,NOR DID THE TRESIZES CHERISH ANY DELUSIONS AS TO ABILITY TO FIND ANY SHERIFF WILLING TO LEVY ON THE PROPERTIES.

AT THE JULY 27,1987 HEARING,JUDGE C.C. ATKINS CHARGED THE PETITIONERS OF VIOLATING RULE 11,CLAIMING THE COMMON LAW PLEADINGS

HAD BEEN FILED FOR THE IMPROPER PURPOSES, ALTHOUGH JULY 29 WAS MORE THAN A MONTH AFTER JUNE 12 WHEN THE JUDGE DISMISSED THE CASE FOR LACK OF JURISDICTION. BOTH THE JULY 29,1987 HEARING AND THE SEPTEMBER 8HEARING BORE THE SAME NUMBER AS THE ORIGINAL CIVIL CASE, DISMISSED WITH PREJUDICE JUNE 12,1987. (BOTH DOCKET SHEETS AND TRANSCRIPTS SUPPORT THE ABOVE STATEMENTS.)

AT THE SEPTEMBER 8,1987 HEARING, THE SO-CALLED TRIAL AND CONVICTION OF THE PETITIONERS FOR VIOLATION OF RULE 11 AND FOR CRIMINAL CONTEMPT OF COURT TOOK PLACE, COMPLETELY BYPASSING ALL SUBSTANTIVE RIGHTS OF COMMON LAW. NO WRITTEN COMPLAINT AGAINST THE PETITIONERS WAS FILED AT THIS TIME OR ANY TIME. LATER, THE JUDGE CLAIMED THAT WHILE HE HAD NO JURISDICTION OVER THE CIVIL CASE, RULE 11 AND RULE 42B GAVE HIM JURISDICTION OVER THE CONDUCT OF THE LITIGANTS. RESEARCH BY THE PETITIONERS FAILED TO DISCLOSE SUPPORT FOR THIS CLAIM.

NOVEMBER 3,1987, JUDGE C.C. ATKINS CHANGED THE CASE NO. 87-0403 TO 87-519CR. (APPENDIX A - P. A-12 FOR TERMS OF SENTENCING.)

In court on November 3rd,1987,the Petitioners were handed a typed Order of Sentencing,dated November 2,1987,a day before the trial and sentencing took place. The Petitioners also received through the mail a typed Order dated November 2,1987; thus the Petitioners were denied their right of due process guaranteed by the U.S.Constitution.

Collusion obviously existed in the case 87-0403,USDC,involving A.J.Goshgarian, lawyerN.K.Rutkin,lawyer and their de facto partner,suspended lawyer,N.F.Solomon plus N.F. Solomon's long time friend,judge C.C.Atkins. The first three mentioned share a suite of offices at 35 N.E.17 Street,Miami,Florida.

In this conspiracy,N.F.Solomon is the master mind,the other two lawyers are foot soldiers,and judge C.C.Atkins is the hatchet man.

The object of the conspiracy,(violation of USCC,sec.241) is to loot the treasury of Fairmont House,Inc.The first step was N.F.

SOLOMON'S CHOICE OF HIS DE FACTO PARTNER,A.J. GOSHGARIAN,AS LEGAL COUNSEL FOR FAIRMONT HOUSE,INC.THIS ACTION WAS IN RESPONSE TO A COMPLAINT THAT THE PRESTIGIOUS LAW FIRM OF BECKER,POLIAKOFF,AND STREITFELD WAS CHARGING THE EXCESSIVE FEE OF $110 PER HOUR TO REPRESENT FAIRMONT HOUSE,INC. SOLOMON THEN TERMINATED BECKER,POLIAKOFF AND STREITFELD AT $110 PER HOUR AND CONTRACTED WITH HIS DE FACTO LAW PARTNER, A.J.GOSHGARIAN AT $ 150 PER HOUR TO REPRESENT FAIRMONT HOUSE INC. AS LEGAL COUNSEL(OFF.TR.SEPT.8,1987,P.6,L.10,P.10,L,35 P.11,LL 1-2.)

THE NEXT STEP,IN WHICH THE ESOTERIC HAND OF N.F.SOLOMON WAS OBVIOUS,WAS ALERTING JUDGE C.C.ATKINS TO THE PETITIONERS' FILING OF COMMON LAW DEFAULT JUDGEMENTS,LIENS,AND LIS PENDENS ON THE PROPERTIES OF SOME OF THE CO-OWNERS OF FAIRMONT HOUSE,INC.C.C.ATKINS OBEDIENTLY WENT ALONG WITH HIS OLD FRIEND N.F. SOLOMON,RELITIGATED THE CIVIL SUIT DISMISSED WITH PREJUDICE,ORDERED THE PETITIONERS TO APPEAR BEFORE HIM,REFUSED TO HONOR THE PETIT-

IONERS' JUDICAL NOTICE,SENT ARMED MARSHALS (WITHOUT A WARRANT) TO ARREST THE PETITIONERS AND SUCCEEDED IN CHARGING,CONVICTING AND SENTENCING THEM FOR CRIMINAL CONTEMPT OF COURT.

AT THE HEARING NOVEMBER 3,1987,C.C. ATKINS INDICATED THAT BECAUSE OF REPORTS BY THE PETITIONERS' DOCTOR RE THE PRECARIOUS STATE OF HEALTH OF BOTH PETITIONERS,HE HAD ASKED A DOCTOR TO COME TO COURT,WHO,WITH THE PERMISSION OF THE PETITIONERS, WOULD EXAMINE THEM.THE PETITIONERS SOON FOUND OUT FROM THE "DOCTOR" THAT INSTEAD OF BEING A REGULAR MEDICAL DOCTOR, HE WAS A PSYCHIATRIST.THE PETITIONERS AGREED TO A PSYCHIATRIC EXAMINATION IF THE PARTIES OF THE OPPOSITION WOULD DO LIKEWISE.(NO SUCH AGREEMENT,ERGO NO PSYCHIATRIC EXAMINATION.) HOWEVER,THIS DEVIOUS ATTEMPT BY THE JUDGE CONFIRMED EVIDENCE OF COLLUSION,AS FORCING THE PETITIONERS TO SUBMIT TO A PSYCHIATRIC EXAMINATION WAS A LONG CHERISHED PROJECT OF N,F.SOLMON,WHICH HAD BEEN UNSUCCESSFULLY ATTEMPTED IN THE CIRCUIT COURT. AN UNFAVORABLE PSYCHIATRIC REPORT MIGHT BE MANIPULATED TO CONFINE

THE PETITIONERS TO A MENTAL INSTITUTION, THEREBY GIVING N.F.SOLOMON A FREE HAND TO LOOTTHE TREASURY OF FAIRMONT HOUSE AND THE PETITIONERS' ESTATE.

JUST BEFORE THE NOVEMBER 3,1987 SENTENCING,A POISON PEN LETTER,RE LAWRENCE TRESIZE AND WRITTEN BY N.F.SOLOMON,WAS HANDED TO JUDGE C.C.ATKINS. THE FINAL CONVINCING EVIDENCE OF CONSPIRACY WAS THAT IN IMPOSING SANCTIONS ON THE PETITIONERS,AT THE NOVEMBER HEARING,THE JUDGE IMPOSED THE TOTAL AMOUNTS ON EACH TRESIZE,THOUGH IT WAS A JOINT ACTION SUIT.THUS N.F.SOLOMON AND HIS TWO DE FACTO LAW PARTNERS,A.J.GOSHGARIAN AND N.K.RUTKIN REAPED DOUBLE THE AMOUNTS DEMANDED AS LEGAL FEES RECORDED AT THE SEPTEMBER 8,1987 HEARING (OFF.TR.SEPT.8,1987,P.11,LL.31-35 AND P. 12,LL.1-2).

ACTUALLY,THE IMPOSITION OF ANY SANCTIONS IN THE ABOVE CASE IS PROHIBITED BY THE RULING IN STANDARD V.OLESEN,74 S.CT. 768,WHICH PROVIDES,"NO SANCTIONS CAN BE IMPOSED ABSENT PROOF OF JURISDICTION."

JUDGE C.C.ATKINS VIOLATED THE CONSTITUTIONAL RIGHT OF FREE ACCESS TO THE COURTS,FLORIDA CONSTITUTION,ARTICLE I,SEC.21 AND THE USC, RULE 77, WHEN HE PROHIBITED THE PETITIONERS FROM FILING ANY MORE PAPERS RELATING TO THEIR CASE.

PETITIONERS CLAIM THAT JURISDICTIONAL ERRORS BY C.C.ATKINS INVALIDATED THE ENTIRE PROCEEDINGS. HE FAILED TO RECOGNIZE THE PETITIONERS' CLAIM OF FEDERAL JURISDICTION PURSUANT TO 28,USC,SEC.1331,ACCORDING TO WHICH THE PETITIONERS CLAIMED LACK OF DUE PROCESS IN THE CIRCUIT COURT, SO THAT THEY WERE SEEKING REDRESS OF GRIEVANCES,PROTECTION OF THE LAW AND RESTORATION OF CIVIL RIGHTS. IN THE DIST.CT.CIVIL CASE WAS ALSO DISMISSED WITH PREJUDICE,THE JUDGE CLAIMING THAT SEC.1332, DIVERSITY OF CITIZENSHIP,WAS THE ONLY BASIS FOR FEDERAL JURISDICTION.THIS ERROR IN LAW CHANGED THE ENTIRE COURSE OF THE PROCEEDINGS. ATKINS ALSO ERRED IN SENDING ARMED MARSHALS TO ARREST THE TRESIZES,THE MARSHALS WERE UNABLE TO PRODUCE A WARRANT ON DEMAND AND FAILED TO READ THE MIRANDA RIGHTS TO PETITIONERS.

THE COMPETENCE OF C.C.ATKINS (BORN 1914) IS QUESTIONED AS TO HIS ABILITY TO PRESIDE AS JUDGE. HIS MENTAL CONFUSION, HEREBEFORE INDICATED,IS CONSPICIOUS IN THE EXCERPTS FROM THE TRANSCRIPTS (OFF.TR.JULY 29,1987,P.5,LL.7-16,AND P.18,LL.2-8).SUCH NONSENSICAL BABBLING SCARCELY COMPORTS WITH THE DIGNITY OF A FEDERAL JUDGE.HE SHOULD BE PUT OUT TO PASTURE.(APPENDIX A- A-15.)

A FOOTNOTE TO THE JUDGEMENT OF THE COURT OF APPEALS POINTS OUT AN ERROR ON THE COMMITMENT SHEET,VIZ.THE PETITIONERS HAD BEEN CONVICTED AND SENTENCED UNDER USC SEC.401 AND NOT UNDER RULE 42B AS CLAIMED BY C.C.ATKINS.

CAUSE OF ACTION STATED

PETITIONERS HAVE CONSISTENTLY APPLIED TO THE COURTS FOR GRANTING DUE PROCESS IN LITIGATION INVOLVING REDRESS OF GRIEVANCES AND PROTECTION OF THE LAW. THE CASE IN THE CIRCUIT COURT (ALLEGING CLEAR-CUT,SOLIDLY DOCUMENTED VIOLATIONS OF F.S.719,607 AND 617 PLUS VIOLATIONS OF THE DOCUMENTS OF THE ASSOCIATION)WAS DISMISSED FOR LACK OF CAUSE OF ACTION.THE CIRCUIT COURT ACTION AFFORDED NO SEMBLANCE OF A TRIAL EITHER BY JURY (DENIED)OR BENCH.(HEARINGS TOO

SHORT FOR FREEDOM OF SPEECH,NO ARGUMENT OF POINTS,DENIAL OF REOPENING OF CASE ON BASIS OF NEW EVIDENCE,ETC).

BECAUSE OF VARIOUS CASE PRECEDENTS ESTABLISHING THAT THE AVAILABILITY OF STATE POST DEPRIVATION REMEDY DOES NOT BAR FEDERAL RELIEF (APPENDIX A-P.A-13),PETITIONERS FILED A CASE IN THE USDC,SEEKING REDRESS OF GRIEVANCES,PROTECTION OF THE LAW AND DUE PROCESS IN LITIGATING IN ACCORDANCE WITH THEIR CONSTITUTIONAL RIGHTS,THE USDC JUDGE,C.C.ATKINS DISMISSED THE CASE WITH PREJUDICE BECAUSE IT DID NOT ALLEGE DIVERSITY OF CITIZENSHIP.HE THEREAFTER PERSONALLY RELITIGATED THE CASE, TRANSFORMED A SIMPLE CIVIL CASE SEEKING CONSTITUTIONAL REDRESS OF GRIEVANCES INTO A CRIMINAL CASE AND SENTENCED THESE PETITIONERS ON A CHARGE OF CRIMINAL CONTEMPT OF COURT. THIS SENTENCE WAS AFFIRMED BY THE U.S.COURT OF APPEALS IN ATLANTA,GA.STILL SEEKING RESTORATION OF DUE PROCESS AND CONSTITUTIONALLY PROTECTED CIVIL RIGHTS,THE PETITIONERS NOW PETITION THE UNITED STATES SUPREME COURT.

CONCLUSION

PETITIONERS RESPECTFULLY SUBMIT THAT THIS HONORABLE COURT SHOULD GRANT CERTIORARI FOR THE REASONS SET FORTH HEREIN. THEY FURTHER PRAY THAT THE DECISIONS OF THE LOWER COURTS BE EXPUNGED FOR FAILURE TO GRANT DUE PROCESS, VIOLATING CONSTITUTIONALLY PROTECTED CIVIL RIGHTS, INCLUDING PROTECTION OF THE LAW.

FINALLY PERITIONERS PRAY THAT THIS HONORABLE COURT REVIEW 28, USC, RULE 11 AND REEXAMINE THE OBVIOUSLY UNCONSTITUTIONAL SIX MONTHS RULE ESTABLISHED IN THE CASE OF FRANK V. UNITED STATES , 395 U S. 147, 148-50 (1969). (CF. MIRANDA V. ARIZONA APPENDIX A, P. A-14.)

CERTIFICATE OF SERVICE AND OF MAILING

WE HEREBY CERTIFY THAT WE HAVE THIS DAY FORWARDED FORTY (40) COPIES OF THIS PETITION TO THE UNITED STATES SUPREME COURT BY PLACING COPIES OF SAME IN A PROPERLY ADDRESSED PACKAGE

TO: CLERK OF THE SUPREME COURT OF THE UNITED STATES SUPREME COURT BUILDING 1 FIRST STREET, N.E. WASHINGTON, D.C. 20543.

AND COPIES TO COUNSEL FOR RESPONDENTS, TO

WIT: DAVID O. LEIWANT, UNITED STATES ATTORNEY, ATTORNEY FOR APPELLEE, 155 SOUTH MIAMI, AVENUE MIAMI, FLORIDA 33130.

TO: JUDGE C. CLYDE ATKINS, USDC, 301 NORTH MIAMI AVENUE MIAMI, FLORIDA 33128.

BY DEPOSITING SAME IN THE UNITED STATES MAIL, FIRST CLASS, THIS _____ DAY OF NOVEMBER 1988.

Lawrence Tresize

LAWRENCE TRESIZE, PROPRIA PERSONA

Edith Tresize

EDITH TRESIZE, PROPRIA PERSONA
2700 N.E. 135 STREET
MIAMI, FLORIDA 33181
(305) 947-1972.

APPENDIX "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

LAWRENCE AND EDITH TRESIZE PLAINTIFFS VS. N.F.SOLOMON,C.C.ATKINS, LEAH SIMMS,D.J.HORGAN, TOM MILLER,RICK GUSMAN, JOHN DOE,JANE DOE 1TO 200.	NOTICE OF APPEAL CASE NO.87-519 APPEAL TO:THE U.S. 11TH CIRCUIT COURT OF APPEAL.

COME NOW THE PLAINTIFFS,LAWRENCE AND EDITH TRESIZE,PRO SE,BY AND THROUGH THIS NOTICE OF APPEAL,AND APPEAL THE CONVICTION AND SENTENCING FOR CRIMINAL CONTEMPT OF COURT ON NOVEMBER 3,1987 BY C.CLYDE ATKINS CARRIED OUT BY HIM IN HIS COURTROOM.....

LAWRENCE TRESIZE PRO SE

EDITH TRESIZE PRO SE.
2700 N.E.135 ST
MIAMI,FLORIDA 33181.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO.87-5838
NON-ARGUMENT CALENDAR

D.C.DOCKET NO. 87-519

U.S.OF AMERICA,

PLAINTIFF-APPELLEE,

VERSUS

LAWRENCE AND EDITH TRESIZE,

DEFENDANTS-APPELLANTS.

APPEAL FROM THE U.S.DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA

(JULY 25,1988)

BEFORE VANCE,HATCHETT AND ANDERSON,CIRCUIT JUDGES.

PER CURIAM:

APPELLANTS LAWRENCE AND EDITH TRESIZE APPEAL FROM THEIR CONVICTIONS OF CRIMINAL CONTEMPT. WE AFFIRM.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No.87-5838

D.C.DOCKET No.87-519

UNITED STATES OF AMERICA,

PLAINTIFF-APPELLEE,

VERSUS

LAWRENCE AND EDITH TRESIZE,

DEFENDANTS-APPELLANTS,

MOTION FOR GRANTING SUGGESTION OF REHEARING EN BANC.

COME NOW THE DEFENDANTS-APPELLANTS,WHO RESPECTFULLY MOVE THE COURT FOR A REHEARING EN BANC OF CASE NO. 87-5838,PURSUANT TO THE XIV AMENDMENT OF THE UNITED STATES CONSTITUTION AND TO FRAP 15 (A)(2); IN SUPPORT OF THE ABOVE MOTION,DEFENDANTS-APPELLANTS STATE:

1.THEIR FAILURE TO RECEIVE DUE PROCESS,

2.THEIR FAILURE TO RECEIVE THE PROTECTION OF THE LAW.

3. THEIR FAILURE TO OBTAIN REDRESS OF GRIEVANCES. ALL OF WHICH OCCURRED IN THE DISTRICT COURT, -

4.WHERE A SERIES OF JUDICAL ERRORS MARKED THE PROCEEDINGS.....

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No.87-5838 SEPT 28,1988

UNITED STATES OF AMERICA

PLAINTIFF-APPELLEE

VERSUS

LAWRENCE AND EDITH TRESIZE,

DEFENDANTS-APPELLANTS,

ON APPEAL FROM THE UNITED STATES DISTRICT FOR THE SOUTHERN DISTRICT OF FLORIDA

ORDER:

APPELLANTS'MOTION FOR GRANTING SUGGESTION EN BANC,CONSTRUED AS A REQUEST TO FILE SUPPLEMENTAL ARGUMENT IN SUPPORT OF PETITION FOR RE HEARING IN BANC,IS DENIED.

/s/ ROBERT S.VANCE

UNITED STATES CIRCUIT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No.87-5838
NON-ARGUMENT CALENDAR

D.C.DOCKET No.87-519

UNITED STATES OF AMERICA,

PLAINTIFF-APPELLEE,

VERSUS

LAWRENCE AND EDITH TRESIZE

DEFENDANTS-APPELLANTS.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

BEFORE VANCE, HATCHETT AND ANDERSON, CIRCUIT JUDGES.

JUDGEMENT

THIS CAUSE CAME ON TO BE HEARD ON THE TRANSCRIPT OF THE RECORD FROM THE U.S.DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, AND WAS TAKEN UNDER SUBMISSIONBY THE COURT UPON THE RECORD AND BRIEFS ON FILE, PURSUANT TO CIRCUIT RULE 34-3; ON CONSIDERATION WHEREOF, IT IS NOW HERE ORDERED AND ADJUDGED BY THIS COURT IN THIS CAUSE BE AND THE SAME IS HEREBY, AFFIRMED.....

ISSUED AS MANDATE: OCT 14, 1988.

U.S. CONSTITUTIONAL PROVISIONS
RE TRIAL BY JURY

ARTICLE III, SECTION 2, 3RD. PAR. " THE TRIAL OF ALL CRIMES, EXCEPT IN CASES OF IMPEACHMENT; SHALL BE BY JURY."

AMENDMENT VI-, " IN ALL CRIMINAL PROSECUTIONS THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY."

AMENDMENT VII, " IN SUITS AT COMMON LAW, WHERE THE VALUE IN CONTROVERSY SHALL EXCEED TWENTY DOLLARS, THE RIGHT OF TRIAL BY JURY SHALL BE PRESERVED...".

AMENDMENT V, "NO PERSON. . . SHALL BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW. . . "

AMENDMENT XIV, " NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW. . .".

THE JUDICIARY ACT OF JUNE 19,1934

SEC.2. " THE COURT MAY AT ANY TIME UNITE THE GENERAL RULES PRESCRIBED BY IT FOR CASES IN EQUITY WITH THOSE IN ACTIONS AT LAW SO AS TO SECURE ONE FORM OF CIVIL ACT IONS AND PROCEDURE FOR BOTH: PROVIDED,HOW- EVER, THAT IN SUCH UNION OF RULES THE RIGHT OF TRIAL BY JURY AS AT COMMON LAW AND DECLAR- ED BY THE SEVENTH AMENDMENT TO THE CONSTITUT ION SHALL BE PRESERVED TO THE PARTIES INVIOLATE."

H.TRAWICK'S FLORIDA PRACTICE AND PROCEDURE INTRO.P.IV. " THE FINAL CONSOLIDATION OF COMMON LAW AND EQUITY PROCEDURE OCCURRED IN 1967. BEFORE 1950,FLORIDA FOLLOWED COMMON LAW AND EQUITY PLEADING PRINCIPLES AS MODIFIED BY STATUTES.

28.USC.ORDER OF FEBRUARY 28.1966.SEC.4.P.10

JUSTICE BLACK EXPRESSES DOUBT AS TO CONSTITUTIONALITY OF SOME OF THE 1966 AMENDMENTS, AND HE AGREES WITH JUSTICE DOUGLAS THAT SOME OF THE PROPOSED CRIMINAL RULES GO TO THE VERY BORDER LINE, IF THEY DO NOT ACTUALLY TRANGRESS, THE CONSTITUTIONAL RIGHT FORA DEFENDANT NOT TO BE COMPELLED TO BE A WITNESS AGAINST HIMSELF.JUSTICE BLACK ALSO PROTESTS AGAINST RULES THAT GRANT BROAD DISCRETION TO TRIAL JUDGES WITH REFERENCE TO . . . DISMISSAL OF CASES WITH PREJUDICE,RESULTING IN STAGGERING NUMBERS OF SUCH DISMISSALS,(AS IN THE CASE OF MR.AND MRS.TRESIZE IN BOTH THE CIRCUIT AND U.S.DISTRICT COURTS.)

SIMILARLY,JUSTICE DOUGLAS EXPRESSES THE FEAR THAT THE NEW AMENDMENTS MAY "ENTRENCH ON IMPORTANT CONSTITUTIONAL RIGHTS OF DEFENDANTS."

FIRESTONE T.&R.CO.V.RISJORD 449 US 368,379, EXPLAINES A COURT LACKS DISCRETION TO CONSIDER THE MERITS OF A CASE OVER WHICH IT IS WITHOUT JURISDICTION.(JUDGE C.C.ATKINS REPEATEDLY DECLARED THAT HE HAD NO JURISDICTION AS RECORDED INOFFICIAL TRANSCRIPTS).

MCKINNEY V.GANNETT CO.,694 F 2D 1240,1245, EXPLAINS A COURT LACKING JURISDICTION CAN NOT RENDER A JUDGEMENT AND MUST DISMISS THE CAUSE AT ANY STAGE. IT FURTHER EXPLAINS THE RESPONSIBILITY OF THE COURTS TO DISMISS THE CAUSE ON THEIR OWN MOTION.

ARTICLE I,SEC.8,CL.17,U.S.CONSTITUTION.

" FEDERAL COURT MAY HAVE JURISDICTION OVER REAL PROPERTY LOCATED IN WASHINGTON,D.C. MILITARY BASES,GOVERNMENT BUILDINGS,INDIAN LANDS,PUBLIC LANDS,AND PERHAPS A FEW OTHERS, HOWEVER,IF THE REAL ESTATE IS LOCATED IN MUNCIPALITIES OR COUNTIES WITHIN STATE BOUNDARIES,IT APPEARS FEDERAL COURTS COULD NOT FIND JURISDICTION."(SINCE,ACCORDING TO HIS OWN STATEMENT,JUDGE ATKINS LACKED JURISDICTION,IT WAS ILLEGAL FOR HIM TO ORDER EXPUNGED THE LIENS AND LIS PENDENS FILED BY THE TRESIZES ON PROPERTY IN DADE COUNTY)

KOFFLER AND REPPY, COMMON LAW PLEADING, P. 584

" AT COMMON LAW, ON THE EXPIRATION OF THE RULE FOR JUDGEMENT, IF THERE WERE NO PREVIOUS MOTION FOR A NEW TRIAL, OR IN ARREST OF JUDGEMENT, AND IF THE PREVAILING PARTY HAD HAD THE POSTEA STAMPED AND MARKED BY THE CLERK OF THE POSTEA, HE MIGHT PROCEED TO SIGN FINAL JUDGEMENT."

UNITED STATES DISTRICT COURT FOR
SOUTHERN DISTRICT OF FLORIDA

87-519-CR-ATKINS

UNITED STATES
OF AMERICA

11-3--87

VS.

LAWRENCE TRESIZE

JUDGEMENT AND PROBATION/COMMITMENT ORDER

PLEA_____ NOT GUILTY

FINDING AND
JUDGEMENT_____BENCH TRIAL-GUILTY.

TITLE 18 USC 402.CRIMINAL CONTEMPT OF COURT.

SENTENCE OR
PROBATION ORDER---SIX(6) MONTHS AS TO THE CRIMINAL CONTEMPT OF COURT CHARGE,OR UNTIL OTHERWISE DISCHARGED BY DUE PROCESS OF LAW;IT BEING FURTHER ORDERED AND ADJUDGED THET EXECUTION OF SAID SENTENCE OF IMPRISONMENT IS HEREBY SUSPENDED AND THE DEFENDANT IS PLACED ON PROBATION FOR A PERIOD OF THREE (3) YEARS, UNDER THE STANDING CONDITIONS OF PROBATION, AS DEFINED BY THE COURT'S ORDER ENTERED AUGUST 1, 1964 AND UPON THE FOLLOWING SPECIAL CONDITIONS: THE DEFENDANT (A) SHALL MAKE RESTITUTION IN THE AMOUNT OF $5,372.19 TO FAIRMONT HOUSE CONDOMINIUM ASSOCIATION AND $1,925.00 TO ATTORNEY DAVID H.ROGEL;(B) SHALL NOT FILE ANY PLEADINGS IN ANY

PENDING ACTION PURPORTING TO BE JUDGEMENTS, ORDERS,OR ANY RULING BY THE COURT;(C)SHALL NOT STAMP "VOID" ON ANY PLEADINGS FILED BY THE COURT NOR MAIL SUCH STAMPED PLEADING TO ANY PERSONS;

(D) IS HEREBY FORBIDDEN TO MAINTAIN OR POSSESS ANY FIREARMS;

(E) SHALL UNDERGO SUCH PHYSICAL AND MENTAL EXAMINATION AND PARTICIPATE IN A MEDICAL OR PSYCHOLOGICAL TREATMENT PROGRAM AS MAY BE DIRECTED BY THE PROBATION OFFICER.

U.S.DISTRICT JUDGE

C.CLYDE ATKINS, 11-3-87

A12 cont.

UNITED STATES DISTRICT COURT FOR

SOUTHERN DISTRICT OF FLORIDA

UNITED STATES
OF AMERICA 11-3-87

VS.

EDITH TRESIZE

JUDGEME
JUDGEMENT AND PROBATION/COMMITMENT ORDER

PLEA_____ NOT GUILTY

FINDING AND

JUDGEMENT_____ BENCH TRIAL-GUILTY.

TITLE 18 USC 402, CRIMINAL CONTEMPT OF COURT.

SENTENCE OR
PROBATION ORDER_____SIX (6)MONTHS AS TO THE CRIMINAL CONTEMPTOF COURT CHARGE, OR UNTIL OTHERWISE DISCHARGED BY DUE PROCESS OF LAW; IT BEING FURTHER ORDERED AND ADJUDGED THAT EXECUTION OF SAID SENTENCE OF IMPRISONMENT IS HEREBY SUSPENDED AND THE DEFENDANT IS PLACED ON PROBATION FOR A PERIOD OF THREE (3) YEARS, UNDER THE STANDING CONDITIONS OF PROBATION, AS DEFINED BY THE COURT'S ORDER ENTERED AUGUST1, 1964 AND UPON THE FOLLOWING SPECIAL CONDITIONS THE DEFENDANT (A) SHALL MAKE RESTITUTION IN

THE AMOUNT OF $ 5,372.19 TO FAIRMONT HOUSE CONDOMINIUM ASSOCIATION AND $ 1,925.00 TO ATTORNEY DAVID H.ROGEL;(B) SHALL NOT FILE ANY PLEADINGS IN ANY PENDING ACTION PURPORTING TO BE JUDGEMENTS,ORDERS,OR ANY RULING BY THE COURT;(C) SHALL NOT STAMP "VOID"ON ANY PLEADINGS FILED BY THE COURT NOR MAIL SUCH STAMPED PLEADING TO ANY PERSONS; (D) IS HEREBY FORBIDDEN TO MAINTAIN OR POSSESS ANY FIREARMS;AND (E) SHALL UNDERGO SUCH PHYSICAL AND MENTAL EXAMINATION AND PARTICIPATE IN A MEDICAL OR PSYCHOLOGICAL TREATMENT PROGRAM AS MAY BE DIRECTED BY THE PROBATION OFFICER.

U.S.DISTRICT JUDGE _____

C.CLYDE ATKINS, 11-3-87

IN RUTHERFORD V.BERKELY,(1986,CA 9 CAL) 780 F2D 1444,THE COURT HELD THAT WHERE THE CHALLENGED GOVERNMENT ACTION IS OF SUCH AN EGREIOUS NATURE AS TO CONSTITUTE DEPRIVATION OF FUNDAMENTAL DUE PROCESS RIGHTS, AVAILABILITY OF STATE COURT RELIEF DOES NOT BAR FEDERAL RELIEF UNDER 42 USCS 1983.

IN THE CASE OF MANN V. TUCSON DEPT.OF POLICE, (1986,CA 9 ARIZ.) THE FOLLOWING NOTE APPEARS IN JUR.P.2ND:

"42 USCS 1983 WAS INTENDED TO PROVIDE FEDERAL REMEDY FOR THE VIOLATION OF ONE'S CIVIL RIGHTS ARISING UNDER THE CONSTITUTION."

THE RULING IN MANN V. TUCSON,DEPT.OF POLICE CONFIRMS THE PRINCIPLE THAT THE AVAILABILITY OF STATE POST DEPRIVATION REMEDY DOES NOT BAR USCS 1983 SUBSTANTIVE DUE PROCESS CLAIM.

COMPARE THE SUPREME COURT RULING IN THE CASE OF FRANK V. UNITED STATES (395 US, 147, 148-50 1969) STIPULATING THAT SENTENCES FOR CRIMINAL CONTEMPT OF UP TO SIX MONTHS MAY BE IMPOSED WITHOUT A JURY TRIAL WITH THE STATEMENTS CONCERNING UNCONSTITUTIONALITY THEREOF INCLUDED IN THIS BRIEF AND WITH THE RELEVANT PROVISION IN THE CASE OF MIRANDA V. ARIZONA 384 US 436, 391 (1969). THIS PROVISION STATES:

> "WHERE RIGHTS SECURED BY THE CONSTITUTION ARE INVOLVED, THERE CAN BE NO RULE MAKING OR LEGISLATION WHICH WOULD ABROGATE THEM."

OFFICIAL TRANSCRIPT, JULY 29, 1987,
PAGE 5, LL. 7-21

YOUR COMPLAINT DOES NOT ALLEGE ANY GROUNDS THAT WOULD GIVE THIS COURT JURISDICTION.

MR. TRESIZE: WOULD YOU REPEAT THAT, PLEASE, YOUR HONOR, THAT LAST SENTENCE?

THE COURT: YES, SIR. YOUR COMPLAINT DOES NOT ALLEGE ANY GROUNDS THAT WOULD GIVE THIS COURT JURISDICTION.

MR. TRESIZE: WHY AM I HERE IF YOU DON'T HAVE JURISDICTION?

THE COURT: BECAUSE YOU FAILED TO ACCEPT THE FACT THAT I HAVE NO JURISDICTION.

ALSO ON PAGE 18 OF SAME TRANSCRIPT WE FIND:

WE GOT A CALL FROM THE TITLE COMPANY YESTERDAY VOIDING ALL OF YOUR ORDERS.

THE COURT: I HAVE TOLD MR. TRESIZE IF HE FILES ANY MORE PLEADINGS--

MR. TRESIZE: WHEN DID YOU TELL ME THAT?

THE COURT: I TOLD YOU TODAY.

MR. TRESIZE: THIS WAS FILED PRIOR TO TODAY.